

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 20, 2006

STATE OF TENNESSEE v. ROBERT D. HOFFMAN, JR.

**Direct Appeal from the Circuit Court for Maury County
No. 14671 Jim T. Hamilton, Judge**

No. M2005-02101-CCA-R3-CD - Filed November 27, 2006

Defendant, Robert D. Hoffman, Jr., appeals from the trial court's dismissal of his motion for reduction of sentence. For the reasons set forth below, we affirm the trial court's judgment.

Tenn. R. App. P. 3, Appeal as of Right; Judgment of the Circuit Court Affirmed

THOMAS T. WOODALL, J., delivered the opinion of the court, in which DAVID G. HAYES and NORMA MCGEE OGLE, JJ. joined.

Robert D. Hoffman, Jr., Tiptonville, Tennessee, *pro se*.

Paul G. Summers, Attorney General and Reporter; David H. Findley, Assistant Attorney General; T. Michel Bottoms, District Attorney General; and Christi Thompson, Assistant District Attorney General, for the appellee, the State of Tennessee.

OPINION

On January 24, 2005, Defendant entered pleas of guilty to five counts of incest, a Class C felony, and one count of promoting prostitution, a Class E felony. As part of the negotiated plea agreement, Defendant agreed to a recommended sentence of three years for each incest conviction, and one year for the promoting prostitution conviction, with the incest sentences to be served consecutively, and the promoting prostitution sentence to be served concurrently with the incest sentences, for an effective sentence of fifteen years. Also as part of the plea agreement, an order of nullo prosecute was entered as to five counts of statutory rape, and four counts of promoting prostitution.

Defendant subsequently filed a *pro se* motion for correction/reduction of sentence which was date stamped filed June 3, 2005, by the Maury County Circuit Court Clerk. Rule 35 of the Tennessee Rules of Criminal Procedure provides that

[t]he trial court may reduce a sentence upon motion filed within 120 days after the date the sentence is imposed or probation is revoked. No extensions shall be allowed on the time limitation. No other actions toll the running of this time limitation.

The State argues that the trial court was without jurisdiction to consider Defendant's motion because it was filed beyond the time limit set by Rule 35. Defendant was sentenced on January 24, 2005. Thus, the 120-day window for filing a motion under Rule 35 expired on May 24, 2005. We note that Petitioner's *pro se* motion for correction/reduction of sentence contained in the record is not dated, and there is no proof as to whether Petitioner, who is incarcerated in the Tennessee Department of Correction, complied with Rule 49 of the Tennessee Rules of Criminal Procedure. See Tenn. R. Crim. P. 49(d)(1) (providing that papers filed by a *pro se* litigant incarcerated in a correctional facility will be deemed timely filed if delivered to the appropriate individual at the correctional facility within the time for filing).

Nonetheless, the trial court apparently conducted a hearing on Defendant's motion, although a transcript of the hearing is not included in the record. It is incumbent upon an appellant to prepare a record that conveys a fair, accurate, and complete account of what transpired relative to the issues on appeal. Tenn. R. App. P. 24(b). In the absence of an appropriate record, we must presume that the trial court's determinations are correct. See, e.g., *State v. Meeks*, 779 S.W.2d 394, 397 (Tenn. Crim. App. 1988); *State v. Beech*, 744 S.W.2d 585, 588 (Tenn. Crim. App. 1987).

The thrust of Defendant's motion is based on his challenge to the appropriateness of consecutive sentencing. Although a transcript of Defendant's guilty plea submission hearing is not included in the record, it appears from his petition to enter a plea of guilty, that the imposition of consecutive sentencing was an integral part of his plea agreement with the State. A trial court is authorized to reduce a sentence under Tennessee Rule of Criminal Procedure 35(b) upon a finding that the sentence should be reduced "in the interest of justice." *State v. Hodges*, 815 S.W.2d 151, 154 (Tenn. 1991). However, when the sentence resulted from a plea agreement, as in this case, the scope of Rule 35(b) is limited to those situations in which "unforeseen, post-sentencing developments would permit modification of a sentence in the interest of justice." *State v. McDonald*, 893 S.W.2d 945, 947 (Tenn. Crim. App. 1994) (footnote omitted). Appellate review of a trial court's ruling on a Rule 35(b) motion is under an abuse of discretion standard. *State v. Irick*, 861 S.W.2d 375, 376 (Tenn. Crim. App. 1993).

The trial court found that there was "no reason presented to the Court that would justify any reduction of these sentences." Defendant does not suggest either in his motion or in his brief on appeal that any "unforeseen, post-sentencing developments" are present which would permit modification of his sentence under Rule 35(b) of the Tennessee Rules of Criminal Procedure. Thus, even assuming *arguendo* that Defendant timely filed his motion for reduction of sentence, Defendant is not entitled to relief on this issue.

CONCLUSION

The judgment of the trial court is affirmed.

THOMAS T. WOODALL, JUDGE